IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

CRP.No. 1040 of 2005

(*AS.43/1996 OF SUB COURT,ATTINGAL*
OS.247/1993 OF MUNSIFF COURT,VARKALA)

REVN. PETITIONER/RESPONDENT/DEFENDANT:

E.E.ABDUL REHMAN,
S/O.LATE ESMAIL,
STAR HOUSE, KADAVANKARA,
PALAYAMKUNNU.P.O, VARKALA,
THIRUVANANTHAPURAM DIST.

BY ADV. SRI.C.P.SUDHAKARA PRASAD (SR.)
ADV. SRI.ELVIN PETER P.J.

RESPONDENT/ APPELLANT/PLAINTIFF:

THE INDIAN OVERSEAS BANK,
CENTRAL OFFICE AT 762, ANNASALAI,
CHENNAI-600 002, BRANCH AT AYIROOR-VARKALA,
THE MANAGER OF THE BRANCH IS THE PRINCIPAL OFFICER
AUTHORISED AND COMPETENT TO SUE.

BY ADV. SRI.P.B.SURESH KUMAR, SC, INDIAN OVERSEAS BANK.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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C.R.P. No. 1040 OF 2005

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Dated this the 6th July, 2007

O R D E R

Defendant in O.S.No. 247 of 1993 on the file of the Munsiff's Court, Varkala is the Revision Petitioner. The suit was filed by the respondent-Bank for realisation of money. The suit was dismissed by the trial court. On appeal by the bank, the appellate court set aside the judgment and decree of the trial court and decreed the suit.

2. The contention of the plaintiff -Bank is that a crop loan of Rs. 10,000/- was granted to the defendant on 15.11.1989 and that the defendant has executed a demand promissory note in favour of the plaintiff-Bank. A hypothecation deed was executed in favour of the plaintiff in respect of the existing and future crops. The loan was to be repaid within one year. The defendant paid only a sum of Rs. 4500/- and the balance was not cleared in spite of repeated demands. It is also stated in the plaint that the transaction being a commercial one, the plaintiff is entitled to get future interest at the contractual rate.

3. The defendant contended that the suit is not maintainable and that the defendant is entitled to the benefit of the "*Agricultural and Rural Debt Relief Scheme, 1990*". He contended that the amount taken as loan

was utilised for agricultural purposes and that he is a '*Non-wilful defaulte*r" within the meaning of the scheme. The defendant contended that the transaction was not a commercial one, but it was an agricultural loan. It was contended that the plaintiff is not entitled to get any relief as claimed in the plaint.

4. No oral evidence was adduced before the trial court. The plaintiff produced Exts. A1 to A6 to prove the transaction. The trial court held that since the scheme came into force on 15.05.1990, the defendant is entitled to get the relief under the scheme. The trial court held that the Bank did not produce compiled list of borrowers admitted to rural relief as per clause 4 of the scheme of 1990. It was held that the burden of proof is upon the bank and since the bank had not discharged that burden of proof, the suit is liable to be dismissed.

5. The plaintiff-Bank filed appeal. The appellate court held that the *Agricultural and Rural Debt Relief Scheme, 1990* would not be applicable to the case on hand. The appellate court took note of the definition of '*eligible loan'* in clause 2(g) of the scheme. The expression '*eligible loan*' is defined as under:

> *"(g) "Eligible loan" means*
> *(i) That part of the short term loans, including converted/re-scheduled medium term loan, availed of by an*

individual borrower on or after 1st April 1986, and instalments of a term loan, falling due after 2nd October, 1986, which was overdue to a bank as on the effective date and includes overdue interest."

6. The appellate court held that to get the benefit of the scheme, the instalment of the loan should be due after 2nd October, 1986 and it should be overdue on the effective date, viz, 2nd October, 1989. It was pointed out that the effective date is defined under clause 2 (f) of the scheme as follows:

"Effective date" means 2nd October 1989. "

7. The appellate court held that in the case on hand, the loan was availed by the plaintiff only on 15.11.1989, after the effective date and hence the scheme is not applicable to the defendant. The appellate court also held that the burden of proof is evidently on the defendant to prove that the loan in question comes under the "*Agricultural and Rural Debt Relief Scheme, 1990 ".*

8. The contention of the plaintiff is that the transaction is a commercial one, whereas the defendant contends that it is an agricultural loan. Whatever may be the nature of the transaction, suit for realisation of the amount was maintainable, if the scheme did not apply to the case. The benefit of the scheme is claimed by the defendant. The burden of

proof is on the defendant to establish the necessary facts to claim benefit under the scheme. No documentary or oral evidence was adduced by the defendant to prove his contention. Since the defendant has not discharged his burden of proof cast on him, I am of the view that the appellate court was right in holding that the defendant is not entitled to the benefit of the scheme. Moreover, as rightly held by the appellate court, the scheme applies only to transaction which falls due on the effective date, viz., 2nd October, 1989. In the case on hand, the loan itself was sanctioned after that date. Therefore, the scheme is not applicable to the case.

9. For the foregoing reasons, I am of the view that the appellate court was right in holding that the plaintiff is entitled to get a decree. No grounds are made out to invoke the revisional jurisdiction under section 115 of the Code of Civil Procedure. Civil Revision Petition lacks merit and it is dismissed. No order as to costs.

Learned counsel for the petitioner contends that due to impecunious circumstances, the defendant may not be able to pay the amount immediately. It is contended that he is an agriculturist and he has paid a sum of Rs. 4500/- to the Bank even before the institution of the suit. It is pointed out that Rs.5,000/- was later paid, as directed by this court, as a condition for stay. In the facts and circumstances, the defendant is

granted six months' time to pay off the balance decree debt.

K.T. SANKARAN,
JUDGE.

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